RAFIQ JUMABHOY

v.

ALRICH DVPT. PTE. LTD.

HIGH COURT, SINGAPORE
CHAO HICK TIN J
[ORIGINATING SUMMONS NO. 862 OF 1991]
26 DECEMBER 1991

LAND LAW: *Removal of caveat - Non-compliance with legal requirements - Form prescribed - Option not given to caveator - Whether there was a binding contract of sale and purchase on 6 August 1990 - Land Title Act.*

On 8 June 1990 the plaintiff through his attorney granted an option to one Ms Ho Poh Lin to purchase the plaintiff's property at 36, Ewe Boon Road, Singapore. To exercise the option the grantee was required to sign the acceptance copy of the option and deliver the same with requisite payment to the grantor's solicitors on or before 4.00 pm on 8 August 1990. Clause 13 of the option gave the grantee the right to nominate another party who is either a Singapore citizen or a Singapore company to execute this option provided the grantee signs and returns the nomination form attached to this option.

On 6 August 1990 the plaintiff instructed his solicitors to revoke the option. The notice of revocation was communicated to the solicitors for Ms Ho Poh Lin. On 7 August 1990 the acceptance copy of the option and the nomination form, duly completed, were delivered together with the appropriate payments to the plaintiff's solicitors. By the nomination form Ms. Ho Poh Lin nominated Alrich Development Pte. Ltd., the defendant, to execute the option. The acceptance copy of the option was duly signed by the defendant. Both the nomination form and the acceptance were dated 6 August 1990.

On 7 August 1990 the defendant lodged a caveat (first caveat). One year later on 6 August 1991 the defendant lodged another caveat (second caveat). The plaintiff applied to remove both the caveats lodged by the defendant.

Held:

[1] The first caveat was defective. The option was not given on 6 August 1990; it was 6 June 1990. It was not granted to the defendant but to one Ms Ho Poh Lin. The option was not exercised on 6 August 1990 but on 7 August 1990. The fact that the defendant lodged the second caveat would suggest that the first caveat was probably not in order.

[2] By stating that by virtue of an option dated 8 June 1990 given by the plaintiff and duly exercised by the defendant on 6 August 1990 the defendant was really asserting that a binding contract of sale and purchase came into being on 6 August 1990. The acceptance form although dated 6 August 1990 was not delivered to the plaintiff's solicitors until 7 August 1990. Accordingly the contract could only have come into being on 7 August 1990 and not earlier. The ground stated in the caveat for claiming that on 6 August 1990 defendant was the purchaser was clearly wrong. The caveat did not give "an accurate description of the interest claimed".

[Plaintiff's application allowed.]

Cases referred to:
Vandyke v. Vandyke [1976] 12 ALR 621 ***(foll)***
Bell Bros Pty. Ltd. v. Sarich [1971] WAR 157 ***(cit)***
Eng Mee Yong v. V.Letchumanan [1979] 2 MLJ 212 ***(cit)***

Legislation referred to:
Land Titles Act [Sing], ss. 104, 111

JUDGMENT

Chao Hick Tin J:

This is an application by the plaintiff under s. 111(1) of the Land Title Act to remove two caveats lodged by the defendant.

After hearing submissions of the parties on 28 November 1991, I decided to remove both the caveats on the ground that they are not in compliance with the requirements of s. 104 of the Act and the form prescribed there under. The defendant has appealed against the order and I now give my reasons.

On 8 June 1990, the plaintiff, Rafiq Jumabhoy, through his attorney, granted an option to one Ms. Ho Poh Lin to purchase the plaintiffs property at 36, Ewe Boon Road, Singapore. To exercise the option the grantee was required to sign the acceptance copy of the option and deliver the same with the requisite payment to the grantor's solicitors on or before 4 pm on 8 August 1990. Clause 13 of the option gave the grantee "the right to nominate another party who is either a Singapore citizen or a Singapore company ... to execute this option provided that (the grantee) sign(s) and return(s) the nomination form attached to this option.

For reasons which I need not go into at this time (as they are not relevant), on 6 August 1990 Jumabhoy instructed his solicitors to revoke the option. The notice of revocation was communicated to the solicitors for Ms. Ho Poh Lin.

On 7 August 1990 the acceptance copy of the option and the nomination form, duly completed, were delivered together with the appropriate payment to the solicitors of the grantor (Jumabhoy). By the nomination form Ms. Ho Poh Lin nominated Alrich Development Pte. Ltd., the defendant herein, to execute the option. The acceptance copy of the option was duly signed by Alrich Development. Both the nomination form and the acceptance were dated 6 August 1990.

Also on 7 August 1990 Alrich Development lodged a caveat (hereinafter called "the first caveat") against the property wherein the following was stated:

Estate or interest claimed	:	claims interest as purchaser
Grounds of Claim	:	By virtue of an option dated 6 August 1990 given by the registered proprietor to the caveator and was exercised by the caveator on even date in respect of purchase of the land above described, as to the estate or interest of the registered proprietor.

Correspondence ensued between the solicitors of the parties as to whether Jumabhoy was entitled to revoke the option and whether a binding contract was brought into being on 7 August 1990 when the nomination form and the acceptance copy of the option were delivered to Jumabhoy's solicitors. This dispute is now the subject matter of a suit (No. 1452/1990) instituted by Alrich Development against Jumabhoy wherein Alrich Development

claims for specific performance and damages for breach of contract in lieu of or in addition to specific performance. That suit is pending.

One year later, on 6 August 1991 Alrich Development lodged another caveat (the second caveat) against the same property, the relevant portion of which reads as follows:

Estate or Interest: claim	:	Claims interest as purchaser
Grounds of Claims	:	By virtue of an option dated 8 June 1990 given by the registered proprietor and duly exercised by the caveator on 6 August 1990 as to the estate or interest of the registered proprietor.

The caveat prohibits the registration of any instrument affecting the property unless the caveator consents.

Jumabhoy contended before me that both the first and the second caveats were defective and should be removed. In so far as the first caveat was concerned it was clear to my mind that it was defective. The option was not given on 6 August 1990 it was 6 June 1990. It was not granted to the caveator but to one Ms Ho Poh Lin. The option was not exercised on 6 August 1990 but on 7 August 1990. Counsel for Alrich Development had not seriously tried to argue that the first caveat was not defective. The fact that Alrich Development lodged the second caveat would suggest that it realized that the first caveat was probably not in order.

I now turn to the second caveat. The main objections raised by Counsel for Jumabhoy were these:

(i) Alrich Development did not state the estate or, interest claimed by it. The mere statement that Alrich Development claimed interest as purchaser was not good enough.

(ii) The description of the option was wrong because it gave the impression that the option was granted to Alrich Development and the latter duly exercised the option.

(iii) The option was not exercised on 6 August 1990 but on 7 August 1990. There was therefore no contract on 6 August 1990.

The relevant provisions of the Land Titles Act are the following:

(1) Any person claiming an interest in land, or any person otherwise authorised by any Act to do so, may lodge with the Registrar a caveat in the prescribed form.

(2) A caveator may, according to the extent of his interest, forbid the registration under this Act of any instrument affecting the land against which the caveat is directed, . . .

(3) Every caveat shall be signed by the caveator or by his solicitor, and shall contain:

(a) an **accurate** description of the interest claimed; and

(b) such description as may be sufficient to identify the land intended to be affected."

(Emphasis added)

In the form prescribed in the Land Titles Rules 1979, the following notes appear against the items "Estate or interest claimed" and "Grounds of claim":

Specify estate or interest claimed, eg. fee simple; for leasehold estate, to specify particulars of the term if it is shorter than the whole of the unexpired term.

Specify grounds of claim.

No local case dealing with a similar point was cited to me. As our land titles system is based on the Australian Torrens system, several Australian authorities were relied upon by Counsel for Jumabhoy. I do not propose to refer to them except one. In *Vandyke v. Vandyke* [1976] 12 ALR 621, a decision of the Court of Appeal of New South Wales, Mahoney JA said (at p. 6423):

> ... In order for the caveat to have the effect given to it by s. 74, it must comply with the provisions of s. 72(2). This is not a case in which a substantial compliance with the provisions of the subsection will be sufficient.
>
> There is no simple formula by which it is possible to differentiate between statutory provisions which are mandatory and those which are merely directory. Each provision must be categorized according to the legislative intention as seen from its context. There are, in my opinion, reasons why the context of s. 72(2) should be seen as exhibiting the intention that its provisions should be mandatory. There is "a strong line of distinction". *Cullimore v. Lyme Regis Corporation* [1962] l QB 718 at 726 [1961] 3 All ER 1008, between provisions relating to the performance of a duty and provisions relating to a privilege or a power and the manner of its exercise. In the former class of case, where a duty to the public is involved, the consideration that the performance of that duty should be achieved may be a substantial one in favour of holding that the duty is validly performed, notwithstanding only a substantial and not a detailed compliance with the statutory procedures for its performance has been achieved. On the other hand, where there is granted a privilege or a power to do something which would otherwise not be lawful, or to interfere with the rights of others, *prima facie*, it is to be expected that the statutory provisions relating to its exercise were intended to be mandatory: *Clayton v. Heffron* [1960] 105 CLR 214 at 247; 11961] ALR 368 at 379; *Ex parte Tasker; Re Hannan* [l971] 1 NSWLR 804 at 815.
>
> In the present case, s. 72 grants to a caveator the power to prevent the Registrar-General from recording in the Register any dealing prohibited by the caveat. The effect of this upon a registered proprietor is immediate, and, in a particular case, may be drastic. The power may be exercised at the will of the caveator and without the necessity for the caveator to establish, before it is exercised, even a *prima facie* case for the existence of the estate or interest upon which the exercise of it is based. The only significant statutory sanction upon the proper exercise of it is the liability to "such compensation as may be just", recoverable subsequently in an action at law if the power is not properly used: s. 98. It is, in my opinion, properly to be inferred that the legislative intention was that such a power should be exercisable only subject to **precise compliance** with the requirements of s. 72(2)." [Emphasis added].

While the defect in *Vandyke v. Vandyke* was not identical to those alleged in our case here, I do not see any justification for restricting what Mahoney JA said to only that specific kind of defect. His comments are of general application.

Reverting to the grounds of objection raised by Counsel for Jumabhoy to the second caveat, I did not think there was anything in the first ground. It was clearly stated that the caveator claimed as purchaser as to the estate or interest of the registered proprietor. There could be no room for doubt as to what interest the caveator was claiming and the extent of its claim.

As to the second ground of objection, while it is true that it would have been more complete if it were stated in the caveat that the option was granted to one Ms. Ho Poh Lin and that Alrich Development had been nominated by Ms. Ho to execute the option, I did not think

that these omissions as such were so critical as to render the entry inaccurate. The basis of Alrich Development's claim as purchaser was by virtue of the option which it claimed had been exercised.

However, the third ground is something more significant. By stating that the ground for its claim as purchaser was "by virtue of an option dated 8 June 1990 given by the registered proprietor and duly exercised by the caveator on 6 August 1990" the caveator was really asserting that a binding contract of sale and purchase, came into being on 6 August 1990. But was there such a contract on 6 August 1990 to enable Alrich Development to say that it was a purchaser entitled to lodge the caveat? The indisputable evidence was that while Alrich Development might well have signed the acceptance form on 6 August 1990, it was not delivered to Jumabhoy's solicitors until 7 August 1990. Accordingly, the contract could only have come into being on 7 August 1990 and not earlier. The date on which Alrich Development signed the acceptance form was entirely immaterial as under the terms of the option until the acceptance was delivered with the correct payment, there could be no contract.

Counsel for Alrich Development argued that what was stated in the caveat was just the factual position, that is, that there was the option dated 6 June 1990 and that the acceptance was signed by Alrich Development on 6 August 1990. But those two facts alone would not entitle Alrich Development to claim that it was a purchaser. Merely signing the acceptance form without delivering it with the requisite payment to the vendor's solicitors was of no legal consequence whatsoever. It could not form the basis of a claim that there was already a binding contract and that Alrich Development was the purchaser. The wording of the option on this was clear beyond doubt: "To exercise this option you must sign ... and deliver the same... I note that it was not claimed by Alrich Development that the numeral "6" in the second caveat was a typographic error.

It should be noted that the present wording of s. 72 of the New South Wales Real Property Act 1900 is even less stringent than our provision. Section 72(2) provides that every caveat shall, *inter alia*, state "the estate or interest claimed by the caveator." The pre-1970 provision of this same s. 72(2) required the caveat to contain a **sufficient** description. The word "accurate" is not present in the New South Wales provision. In our case, the requirement is clearly more exacting; it must be an "accurate" description. Whether a description is accurate must depend on the facts and circumstances of each case. I do not think it is possible to generalise.

Accordingly, the ground stated in the caveat for claiming that on 6 August 1990 Alrich Development was the purchaser was clearly wrong. The caveat did not give "an **accurate** description of the interest claimed" as required by s. 104(4) of the Act. In the light of our statutory provisions the reasoning of Mahoney JA, which I have quoted above, applies with even greater force. I therefore ordered its removal. There is nothing to prevent Alrich Development from lodging a fresh caveat. Of course, that will be subject to all prior caveats.

In passing I ought to add that Counsel for Jumabhoy had sought to persuade me to remove the caveat on two substantive grounds. First, that in any event no contract could have come into being between Jumabhoy and Alrich Development on 7 August 1990 as on 6 August 1990 Jumabhoy had already revoked the option. Second, that, as Alrich Development had bought the land for development, damages would be adequate compensation and no specific performance should be ordered. These two are undoubtedly very substantial points. The first point raises rather interesting and novel issues of law. While an option given for consideration

may not be revoked during the period of validity and any attempted revocation would not prevent a contract from coming into being on being accepted by the grantee, Counsel for Jumabhoy submitted that the same was not true if the acceptance was that of a nominee of the grantee. However, Counsel could only refer me to an Australian case where this proposition was mentioned in passing: see *Bell Bros Pty. Ltd. v. Sarich* [1971] WAR 157 at 159. The second point is even more controversial. Counsel urged upon me to abandon the well-established rule that specific performance should be granted in the case of a contract for sale and purchase of real property and adopt the approach of certain Canadian cases.

However, Counsel for Alrich Development had argued that, following *Eng Mee Yong v. V.Letchumanan* [1979] 2 MLJ 212, the resolution of these substantive points should await the trial in Suit No. 1452/1990 where Alrich Development had unsuccessfully sought to obtain summary judgment and where Jumabhoy was given unconditional leave to defend. There, similar points to these were canvassed.

Also found at [1992] 1 CLJ 738